



## REQUEST FOR ACTION CITY COUNCIL

Agenda Date: 2/03/2025  
Agenda Section: Unfinished Business

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**Department:** Public Works – City Engineer

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**Agenda Item:** Forcemain Project Easements

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**APPROVAL REQUIRED:** Simple Majority Vote

### **BACKGROUND**

Since the last meeting, we have met with Staff to follow up on letters the City sent out to property owners on requests to formalize easements for the new replacement (and existing) forcemain.

Staff, including Andy Schwartz, have had some conversations with some of the property owners.

Now is the time for us to reach out to these property owners to see if they have questions on the proposed Easement Sketches, if they want to see something flagged in the field, what it will take to get them to provide an easement, etc.

The Council will then need to meet at some time – possibly in closed session – to approve any easements.

After these discussions, the City Attorney will need to get involved to prepare the actual Easement documents.

This kind of easement assistance was unknown when we prepared our scope of work and engineering effort. We will need to see how these discussions go and what kind of effort we can work into our present agreement and what might be outside of the scope / additional services.

Besides working with property owners on acquiring proposed easements, we continue to use computer analysis tools to see what the impacts of connecting two lift stations – the Main Gravdahl lift station and the Industrial / Business Park lift station – into the one main forcemain out to the wastewater treatment facility.

The Facility Plan (basically a Study) that we previously prepared and was preliminary approved by the MN Pollution Control Agency (MPCA) is being updated by us to include two existing lift stations (Gravdahl and Industrial Park) being connected to the main forcemain (not just the one present main Gravdahl lift station).

We believe this approach – once we figure out all the details – will be the most efficient approach over the long term for the City.



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Another item we are working on is coordinating with funding assistance agencies. As a reminder, we helped the City obtain a \$600,000 grant from the State's (Department of Employment and Economic Development – DEED) Small Cities Development Program (SCDP). This grant is good into 2026.

We are also helping in obtaining a low-interest loan from the State's (Public Facilities Authority – PFA) Clean Water Revolving Fund (CWRF). We recently heard back from the PFA that while this project made the IUP, it did not score high enough and needs the above-mentioned updated Facility Plan to be in the fundable range. We anticipate this will occur on the next IUP for 2026 construction.

### Geotechnical Investigation – RFP

We sent out a Request for Proposals (RFP) to Braun Intertec for a geotechnical investigation for the Lift Station/Forcemain project. This work would include soil borings and geotechnical report. The report is helpful for design. If there are bad soils, we can sometimes adjust our design. The report would also be included in the Bidding Documents and is helpful for the Bidders – especially when horizontal directional drilling is included (as we will be on this project). When bidders have soil information, they can tighten up their unit prices and their bids, providing better prices to the City.

Braun Intertec has responded to our RFP with the attached proposal. In general, they propose to complete 6 penetration test borings, review the samples, complete laboratory testing, and prepare a geotechnical report of their findings for a lump sum fee of \$13,755.

Site access for a drill rig in the Forcemain/Lift Station project area is substantially more limited than in the Front/Main Street project area. In Braun's proposal, they anticipate needing to use an all-terrain vehicle drill rig (vs. a traditional truck-mounted drill rig) to access the boring locations.

The work is proposed to be completed within approximately 9 weeks following receipt of written authorization (pending weather, and other circumstances outside of anyone's control).

### FINANCIAL IMPLICATIONS

As explained above – a combination of grants, loans, and City Wastewater Enterprise funds.

### COUNCIL ACTION REQUESTED

Action required to approve/disapprove the geotechnical proposal from Braun Intertec.

January 28, 2025

Proposal QTB209317

Ms. Angie Duus  
City of Pequot Lakes  
4638 Main Street  
Pequot Lakes, MN 56472

Re: Proposal for a Geotechnical Evaluation  
Pequot Lakes Sanitary Sewer and Lift Station Improvements  
Morehouse Drive to Gravidahl Drive  
Pequot Lakes, Minnesota

Dear Ms. Duus:

Braun Intertec Corporation respectfully submits this proposal to complete a geotechnical evaluation for the proposed utility and lift station improvement project in Pequot Lakes, Minnesota.

## **Project Information**

Per the proposal request and sketches provided via email from Ms. Emma Clarke, Widseth, we understand the project will include installing a new sanitary sewer forcemain utility from the existing wastewater ponds to the existing lift station on Gravidahl Road, connecting the existing industrial park lift station to the new forcemain, and rehabilitating the existing sanitary sewer lift station on Gravidahl Road in Pequot Lakes, Minnesota.

We understand the new forcemain will be mostly directionally drilled with some areas potentially being open cut installation. The forcemain will generally be less than 15 feet deep.

## **Purpose**

The purpose of our geotechnical evaluation will be to characterize subsurface geologic conditions at selected exploration locations, evaluate their impact on the project, and provide geotechnical recommendations for the installation of the utilities.

## **Scope of Services**

We propose the following tasks to help achieve the stated purpose. If we encounter unfavorable or unforeseen conditions during the completion of our tasks that lead us to recommend an expanded scope of services, we will contact you to discuss the conditions before resuming our services.

### **Site Access**

Based on aerial photographs, we anticipate an all-terrain vehicle (ATV) drill rig will be required to access the boring locations. We assume there will be no cause for delays in accessing the exploration locations. We are not including tree clearing, debris or obstruction removal, grading of navigable paths, or snow plowing. If any of these means are required to access the boring locations, we assume it will be provided to us at no cost.

Depending on access requirements, ground conditions or potential utility conflicts, our field crew may alter the exploration locations from those proposed to facilitate accessibility.

Our drilling activities may also impact the vegetation and may rut the surface to access boring locations. Restoration of vegetation and turf is not part of our scope of services.

### **Staking**

We will stake prospective subsurface exploration locations, as selected by Widseth, and obtain surface elevations at those locations using GPS (Global Positioning System) technology. For purposes of linking the GPS data to an appropriate reference, we request that you provide CAD files indicating location/elevation references appropriate for this project, or give us contact information for the consultant that might have such information.

### **Utility Clearance**

Prior to drilling, we will contact Gopher State One Call and arrange for notification of the appropriate utility vendors to mark and clear the exploration locations of public underground utilities. You, or your authorized representative, are responsible to notify us before we begin our work of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

### **Land Owner Permissions**

Prior to commencing with field work, we assume others will obtain written permission from property owners for utilizing private properties to access boring locations and for completing proposed explorations located outside of the public right-of-way.

### **Penetration Test Borings**

As requested, we will drill 6 standard penetration test (SPT) borings for the project, extending each boring to a depth of about 15 feet. We will perform standard penetration tests at 2 1/2-foot vertical intervals to boring termination depth. If the borings encounter groundwater during or immediately after drilling of each boring, we will record the observed depth on the boring logs.

If the intended boring depths do not extend through unsuitable material, we will extend the borings at least 5 feet into suitable material at greater depths. The additional information will help evaluate such issues as excavation depth, consolidation settlement, and foundation alternatives, among others. If we identify a need for deeper (or additional) borings, we will contact you prior to increasing our total estimated drilled footage and submit a Change Order summarizing the anticipated additional effort and the associated cost, for your review and authorization.

### **Borehole Abandonment**

We will backfill our exploration locations immediately after completing the drilling at each location.

Over time, subsidence of borehole backfill may occur, requiring releveling of surface grades. We are not assuming responsibility for re-leveling after we complete our fieldwork.

### **Sample Review and Laboratory Testing**

We will return recovered samples to our laboratory, where a geotechnical engineer will visually classify and log them. To help classify the materials encountered and estimate the engineering properties necessary to our analyses, we anticipate performing 4 moisture content tests and 4 mechanical analyses (through a #200 sieve only). We will adjust the actual number and type of tests based on the results of our borings.

### **Engineering Analyses**

We will use data obtained from the subsurface exploration and laboratory tests to evaluate the subsurface profile and groundwater conditions, and to perform engineering analyses related to utility installation.

### **Report**

We will prepare a report including:

- A sketch showing the exploration locations.
- Logs of the borings describing the materials encountered and presenting the results of our groundwater measurements and laboratory tests.
- A summary of the subsurface profile and groundwater conditions.
- Discussion identifying the subsurface conditions that will impact design and construction.
- Discussion regarding the reuse of on-site materials during construction.
- Recommendations for preparing utility subgrades, and the selection, placement and compaction of fill.
- Discussion regarding how site soil conditions will impact directional drilling and trenchless installation of utilities.

We will only submit an electronic copy of our report to you unless you request otherwise. At your request, we can also send the report to additional project team members.

## **Schedule**

We anticipate performing our work according to the following schedule.

- Drill rig mobilization – within about 4 to 6 weeks following receipt of written authorization
- Field exploration – 2 days on site to complete the work
- Classification and laboratory testing – within 1 to 2 weeks after completion of field exploration
- Preliminary results – within about 1 week after completion of field exploration
- Final report submittal – within about 2 weeks after completion of field exploration

If we cannot complete our proposed scope of services according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

## **Fees**

We will furnish the services described in this proposal for a lump sum fee of \$13,755. Please note that our drilling/field services were budgeted to occur within our normal work hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. If conditions occur that require us to work outside of these hours, we will request additional fees to cover our additional overtime costs.

Our work may extend over several invoicing periods. As such, we will submit partial progress invoices for work we perform during each invoicing period.

## **General Remarks**

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. Please sign and return a copy to us in its entirety.

We based the proposed fee on the scope of services described and the assumptions that you will authorize our services within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Andrew Hillerud at 218.260.0930 (ahillerud@braunintertec.com).

Sincerely,

BRAUN INTERTEC CORPORATION



Andrew J. Hillerud, PE  
Project Engineer



Steven A. Thayer, PE  
Senior Manager, Senior Engineer

Attachment:  
General Conditions (11/4/2024)

c: Emma Clarke, Widseth  
Tim Houle, PE, Widseth

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The proposal is accepted, and you are authorized to proceed.

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**Authorizer's Firm**

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**Authorizer's Signature**

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**Authorizer's Name (please print or type)**

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**Authorizer's Title**

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**Date**

## SECTION 1: AGREEMENT

**1.1 Agreement.** This agreement consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between Consultant and Client and supersedes all prior negotiations, representations or agreements, either written or oral.

**1.2 Parties to the Agreement.** The parties to this Agreement are the Braun Intertec entity ("Consultant") and the client ("Client") as described in the accompanying written proposal or authorization. Consultant and Client may be individually referred to as a Party or collectively as the Parties.

## SECTION 2: SCOPE OF SERVICES

**2.1 Services.** Consultant will provide services ("Services") in connection with the project ("Project") which are specifically described in this Agreement. Client understands and agrees that Consultant's Services are limited to those which are expressly set forth in this Agreement.

**2.2 Additional Services.** Any Services not specifically set forth in the Agreement constitute "Additional Services." Additional Services must be agreed upon in writing by the Parties prior to performance of the Additional Services and may entitle Consultant to additional compensation and schedule adjustments. Additional compensation will be based upon Consultant's then current rates and fees.

## SECTION 3: PERFORMANCE OF SERVICES

**3.1 Standard of Care.** Consultant will perform its professional Services consistent with the degree of care and skill exercised by members of Consultant's profession performing under similar circumstances at the same time and in the same locality in which the professional Services are performed. CONSULTANT DISCLAIMS ALL STATUTORY, ORAL, WRITTEN, EXPRESS, AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR PERFORMANCE OF SERVICES IN A GOOD AND WORKMANLIKE MANNER.

**3.2 Written Reports and Findings.** Unless otherwise agreed in writing, Consultant's findings, opinions, and recommendations will be provided to Client in writing and may be delivered via electronic format. Client agrees not to rely on oral findings, opinions, or recommendations.

**3.3 Observation or Sampling Locations.** Locations of field observations or sampling described in Consultant's report or shown on Consultant's sketches reference Project plans or information provided by others or estimates made by Consultant's personnel. Consultant will not survey, set, or check the accuracy of those points unless Consultant accepts that duty in writing. Client agrees that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. Client accepts the inherent risk that samples or observations may not be representative of items not sampled or seen and further that site conditions may vary over distance or change over time.

**3.4 Project Site Information.** Client will provide Consultant with prior environmental, geotechnical and other reports, specifications, plans, and information to which Client has access about the Project site and which are necessary for Consultant to carry out Consultant's Services. Client agrees to provide Consultant with all plans, changes in plans, and new information as to Project site conditions until Consultant has completed its Services.

**3.5 Subsurface Objects.** To the extent required to carry out Consultant's Services, Client agrees to provide Consultant, in a timely manner, with information that Client has regarding buried objects at the Project site. Consultant will not be responsible for locating buried objects or utilities at the Project site unless expressly set forth in this Agreement, or expressly required by applicable law. Client agrees to hold Consultant harmless, defend, and indemnify Consultant from claims, damages, losses, penalties and expenses (including attorney fees) involving buried objects or utilities that were not properly marked or identified or of which Client had or should have had knowledge but did not timely notify Consultant or correctly identify on the plans Client or others furnished to Consultant. Consultant, from time to time, may hire a third party to locate underground objects or utilities and, unless otherwise expressly stated in this Agreement, such action shall be for the sole benefit of Consultant and in no way will alleviate Client of its responsibilities hereunder.

**3.6 Hazardous Materials.** Client will notify Consultant of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any Project site or in any sample or material provided to Consultant. Client agrees to provide Consultant with information in Client's possession or control relating to such samples or materials. If Consultant observes or suspects the presence of contaminants not anticipated in this Agreement, Consultant may terminate Services without liability to Client or to others, and Client will compensate Consultant for fees earned and expenses incurred up to the time of termination.

**3.7 Supervision of Others.** Consultant shall have no obligation to supervise or direct Client's representatives, contractors, or other third parties retained by Client. Consultant has no authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Client, Client's representatives, contractors, or other third parties retained by Client.

**3.8 Safety.** Consultant will provide a health and safety program for its employees as well as reasonable personal protective equipment ("PPE") typical for the performance of the Services provided by this Agreement and as required by law. Consultant shall be entitled to compensation for all extraordinary PPE required by Client. Client will provide, at no cost to

Consultant, appropriate Project site safety measures which are necessary for Consultant to perform its Services at the Project location or work areas in connection with the Project. Consultant's employees are expressly authorized by Client to refuse to work under conditions that may, in an employee's sole discretion, be unsafe. Consultant shall have no authority over or be responsible for the safety precautions and programs, or for security, at the Project site (except with respect to Consultant's own Services and those of its subconsultants).

**3.9 Project Site Access and Damage.** Client will provide or ensure access to the site. In the performance of Services some Project site damage is normal even when due care is exercised. Consultant will use reasonable care to minimize damage to the Project site. Unless otherwise expressly stated in this Agreement, the cost of restoration for such damage has not been included in the estimated fees and will be the responsibility of the Client.

**3.10 Monitoring Wells.** To the extent applicable to the Services, monitoring wells are Client's property, and Client is responsible for monitoring well permitting, maintenance, and abandonment unless otherwise expressly set forth in this Agreement.

**3.11 Contaminant Disclosures Required by Law.** Client agrees to make all disclosures related to the discovery or release of contaminants that are required by law. In the event Client does not own the Project site, Client acknowledges that it is Client's duty to inform the owner of the Project site of the discovery or release of contaminants at the site. Client agrees to hold Consultant harmless, defend, and indemnify Consultant from claims, damages, penalties, or losses and expenses, including attorney fees, related to Client's failure to make any disclosure required by law or for failing to make the necessary disclosure to the owner of the Project site.

## SECTION 4: SCHEDULE

**4.1 Schedule.** Consultant shall complete its obligations within a reasonable time and shall make decisions and carry out its responsibilities in a manner consistent with the Standard of Care. Specific periods of time for rendering Services or specific dates by which Services are to be completed are provided in this Agreement. If Consultant is delayed in the performance of the Services by actions, inactions, or neglect of Client or others for whom Client is responsible, by changes ordered in the Services, or by other causes beyond the control of Consultant, including force majeure events, then the time for Consultant's performance of Services shall be extended and Consultant shall receive payment for all expenses attributable to the delay in accordance with Consultant's then current rates and fees.

**4.2 Scheduling On-Site Observations or Services.** To the extent Consultant's Services require observations, inspections, or testing be performed at the Project site, Client understands and agrees that Client, directly or indirectly through its authorized representative, has the sole right and responsibility to determine and communicate to Consultant the scheduling of observations, inspections, and testing performed by Consultant. Accordingly, Client also acknowledges that Consultant bears no responsibility for damages that may result because Consultant did not perform such observations, inspections, or testing that Client failed to request and schedule. Client understands that the scheduling of observations, inspections, or testing will dictate the time Consultant's field personnel spend on the job site and agrees to pay for all services provided by Consultant due to Client's scheduling demands in accordance with Consultant's then current rates and fees.

## SECTION 5: COST AND PAYMENT OF SERVICES

**5.1 Cost Estimates.** Consultant's price or fees provided for in this Agreement are an estimate and are not a fixed amount unless otherwise expressly stated in this Agreement. Consultant's estimated fees are based upon Consultant's experience, knowledge, and professional judgment as well as information available to Consultant at the time of this Agreement. Actual costs may vary and are not guaranteed or warranted.

**5.2 Payment.** Consultant will invoice Client on a monthly basis for Services performed. Client will pay for Services as stated in this Agreement together with costs for Additional Services or costs otherwise agreed to in writing within thirty (30) days of the invoice date. Unless otherwise stated in this Agreement or agreed to in writing, Consultant's costs for all services performed will be based upon Consultant's then current rates, fees, and charges. No retainage shall be withheld by Client. All unpaid invoices will incur an interest charge of 1.5% per month or the maximum allowed by law.

**5.3 Other Payment Conditions.** Consultant will require Client credit approval and Consultant may require payment of a retainer fee. Client agrees to pay all applicable taxes. Client's obligation to pay for Services under this Agreement is not contingent on Client's ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, Client's successful completion of any project, receipt of payment from a third party, or any other event.

**5.4 Third Party Payment.** Provided Consultant has agreed in writing, Client may request Consultant to invoice and receive payment from a third party for Consultant's Services. Consultant, in its sole discretion, may also require the third party to provide written acceptance of all terms of this Agreement. Neither payment to Consultant by a third party nor a third party's written acceptance of all terms of this Agreement will alter Client's rights and responsibilities under this Agreement. Client expressly agrees that the Agreement contains sufficient consideration notwithstanding Consultant being paid by a third party.

**5.5 Non-Payment.** If Client does not pay for Services in full as agreed, Consultant may retain work not yet delivered to Client and Client agrees to return all Project Data (as defined in this Agreement) that may be in Client's possession or under Client's control. If Client fails to pay Consultant in accordance with this Agreement, such nonpayment shall be considered a

default and breach of this Agreement for which Consultant may terminate for cause consistent with the terms of this Agreement and without liability to Client or to others. Client will compensate Consultant for fees earned and expenses incurred up to the time of termination. Client agrees to be liable to Consultant for all costs and expenses Consultant incurs in the collection of amounts invoiced but not paid, including but not limited to attorney fees and costs.

## SECTION 6: OWNERSHIP AND USE OF DATA

**6.1 Ownership.** All reports, notes, calculations, documents, and all other data prepared by Consultant in the performance of the Services ("Project Data") are instruments of Consultant's Services and are the property of Consultant. Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto, of Project Data.

**6.2 Use of Project Data.** The Project Data of this Agreement is for the exclusive purpose disclosed by Client and, unless agreed to in writing, for the exclusive use of Client. Client may not use Project Data for a purpose for which the Project Data was not prepared without the express written consent of Consultant. Consultant will not be responsible for any claims, damages, or costs arising from the unauthorized use of any Project Data provided by Consultant under this Agreement. Client agrees to hold harmless, defend and indemnify Consultant from any and all claims, damages, losses, and expenses, including attorney fees, arising out of such unauthorized use.

**6.3 Samples, Field Data, and Contaminated Equipment.** Samples and field data remaining after tests are conducted, as well as field and laboratory equipment that cannot be adequately cleansed of contaminants, are and continue to be the property of Client. Samples may be discarded or returned to Client, at Consultant's discretion, unless within fifteen (15) days of the report date Client gives Consultant written direction to store or transfer the samples and materials. Samples and materials will be stored at Client's expense.

**6.4 Data Provided by Client.** Electronic data, reports, photographs, samples, and other materials provided by Client or others may be discarded or returned to Client, at Consultant's discretion, unless within 15 days of the report date Client gives Consultant written direction to store or transfer the materials at Client's expense.

## SECTION 7: INSURANCE

**7.1 Insurance.** Consultant shall keep and maintain the following insurance coverages:

- a. Workers' Compensation: Statutory
- b. Employer's Liability: \$1,000,000 bodily injury, each accident | \$1,000,000 bodily injury by disease, each employee | \$1,000,000 bodily injury/disease, aggregate
- c. General Liability: \$1,000,000 per occurrence | \$2,000,000 aggregate
- d. Automobile Liability: \$1,000,000 combined single limit (bodily injury and property damage)
- e. Excess Umbrella Liability: \$5,000,000 per occurrence | \$5,000,000 aggregate
- f. Professional Liability: \$2,000,000 per claim | \$2,000,000 aggregate

**7.2 Waiver of Subrogation.** Client and Consultant waive all claims and rights of subrogation for losses arising out of causes of loss covered by the respective insurance policies.

**7.3 Certificate of Insurance.** Consultant shall furnish Client with a certificate of insurance upon request.

## SECTION 8: INDEMNIFICATION, CONSEQUENTIAL DAMAGES, LIABILITY LIMITS

**8.1 Indemnification.** Consultant's only indemnification obligation shall be to indemnify and hold harmless the Client, its officers, directors, and employees from and against those damages and costs incurred by Client or that Client is legally obligated to pay as a result of third party tort claims, including for the death or bodily injury to any person or for the destruction or damage to any property, but only to the extent proven to be directly caused by the negligent act, error, or omission of the Consultant or anyone for whom the Consultant is legally responsible. This indemnification provision is subject to the Limitation of Liability set forth in this Section 8.

**8.2 Intellectual Property.** Client agrees to indemnify Consultant against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by Client or others on behalf of Client.

**8.3 Mutual Waiver of Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREUNDER, NEITHER CONSULTANT NOR CLIENT SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, OR LOSS OF USE OR RENTAL, LOSS OF PROFIT, LOSS OF BUSINESS OPPORTUNITY, LOSS OF PROFIT OR REVENUE OR COST OF FINANCING, OR OTHER SUCH SIMILAR AND RELATED DAMAGE ASSERTED IN THIRD PARTY CLAIMS, OR CLAIMS BY EITHER PARTY AGAINST THE OTHER.

**8.4 Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY IN THE AGGREGATE OF CONSULTANT, CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT FOR ANY CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED CONSULTANT'S PERFORMANCE OF THE SERVICES OR THIS AGREEMENT, FROM ANY CAUSE OR CAUSES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS AND OMISSIONS,

**STRICT LIABILITY, BREACH OF CONTRACT, INDEMNIFICATION OBLIGATIONS OR BREACH OF WARRANTY, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY CONSULTANT OR \$50,000, WHICHEVER IS GREATER.**

## SECTION 9: MISCELLANEOUS PROVISIONS

**9.1 Services Prior to Agreement.** Directing Consultant to commence Services prior to execution of this Agreement constitutes Client's acceptance of this unaltered Agreement in its entirety.

**9.2 Confidentiality.** To the extent Consultant receives Client information identified as confidential, Consultant will not disclose that information to third parties without Client consent. Additionally, any Project Data prepared in performance of the Services will remain confidential and Consultant will not release the reports to any third parties not involved in the Project. Neither of the aforesaid confidentiality obligations shall apply to any information in the public domain, information lawfully acquired from others on a nonconfidential basis, or information that Consultant is required by law to disclose.

**9.3 Relationship of the Parties.** Consultant will perform Services under this Agreement as an independent contractor, and its employees will at all times be under its sole discretion and control. No provision in this Agreement shall be deemed or construed to create a joint venture, partnership, agency or other such association between the Parties.

**9.4 Resource Conservation and Recovery Act.** To the extent applicable to the Services, neither this Agreement nor the providing of Services will operate to make Consultant an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation and Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous substances. Client agrees to hold Consultant harmless, defend, and indemnify Consultant from any claims, damages, penalties or losses resulting from the storage, removal, hauling or disposal of such substances.

**9.5 Services in Connection with Legal Proceedings.** Client agrees to compensate Consultant in accordance with its then current fees, rates, or charges if Consultant is asked or required to respond to legal process arising out of a proceeding related to the Project and as to which Consultant is not a party.

**9.6 Assignment.** This Agreement may not be assigned by Consultant or Client without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**9.7 Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended, or will be construed, to confer upon or give any person or entity other than Consultant and Client, and their respective permitted successors and assigns, any rights, remedies, or obligations under or by reason of this Agreement.

**9.8 Termination.** This Agreement may be terminated by either Party for cause upon seven (7) days written notice to the other Party. Should the other Party fail to cure and perform in accordance with the terms of this Agreement within such seven-day period, the Agreement may terminate at the sole discretion of the Party that provided the written notice. The Client may terminate this Agreement for its convenience. If Client terminates for its convenience, then Consultant shall be compensated in accordance with the terms hereof for Services performed, reimbursable costs and expenses incurred prior to the termination, and reasonable costs incurred as a result of the termination.

**9.9 Force Majeure.** Neither Party shall be liable for damages or deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, including but not limited to acts of God, acts of civil or military authority, embargoes, pandemics, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, strikes or lock-outs, declared states of emergency, and changes in laws, statutes, regulations, or ordinances.

**9.10 Disputes, Choice of Law, Venue.** In the event of a dispute and prior to exercising rights at law or under this Agreement, Consultant and Client agree to negotiate all disputes in good faith for a period of 30 days from the date of notice of such dispute. This Agreement will be governed by the laws and regulations of the state in which the Project is located and all disputes and claims shall be heard in the state or federal courts for that state. Client and Consultant each waive trial by jury.

**9.11 Individual Liability.** No officer or employee of Consultant, acting within the scope of employment, shall have individual liability for any acts or omissions, and Client agrees not to make a claim against any individual officers or employees of Consultant.

**9.12 Severability.** Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

**9.13 Waiver.** The failure of either Party hereto to exercise or enforce any right under this Agreement shall not constitute a release or waiver of the subsequent exercise or enforcement of such right.

**9.14 Entire Agreement.** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provision of Services by Consultant to Client. This Agreement may be amended only by a written instrument signed by both Parties. In the event Client issues a purchase order or other documentation to authorize Consultant's Services, any conflicting or additional terms of such documentation are expressly excluded from this Agreement.